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November 26, 2002  
DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

*Hearing Officer's Decision*

Name of Case: Personnel Security Hearing

Date of Filing: April 25, 2002

Case Number: VSO-0542

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (the Individual) to retain a DOE access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." The Department of Energy (DOE) suspended the Individual's access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony in this proceeding, the Individual's access authorization should be restored. For the reasons stated below, I have determined that the Individual's access authorization should not be restored.

*I. BACKGROUND*

The Individual is an employee of a DOE Contractor. On April 30, 2001, the Individual reported that he had been arrested for driving under the influence (DUI) on April 27, 2001. The local DOE Security Office subsequently conducted a Personnel Security Interview (PSI) with the Individual on August 28, 2001. *See* DOE Exhibit 8. Because alcohol was involved and the Individual had two previous arrests for DUI, the Local Security Office requested that the Individual be interviewed by a DOE Consultant Psychiatrist (DOE Psychiatrist). The DOE Psychiatrist interviewed the Individual on November 27, 2001, and issued an evaluation to the DOE on November 30, 2001, in which he diagnosed the Individual as suffering from alcohol and cannabis abuse. DOE Exhibit 3 at 8. The DOE Psychiatrist also found that the Individual's use of cannabis while holding a security clearance demonstrates a significant defect in judgment. *Id.* The DOE Psychiatrist found no evidence that the Individual had been rehabilitated or reformed. *Id.* Because of the concerns raised by the Individual's DUI and other facts raised during the interview with the DOE Psychiatrist, the Individual's access authorization was suspended. *See* 10 C.F.R. § 710.9. The DOE then issued a letter notifying the Individual that information the DOE possessed created a substantial doubt concerning his eligibility for access authorization.

See March 26, 2002 Letter from Director, Personnel Security Division, to Individual (March 26, 2002 Notification Letter); 10 C.F.R. § 710.21.

The March 26, 2002 Notification Letter specifies four areas of derogatory information described in 10 C.F.R. § 710.8. First, the Notification Letter charges that the Individual “has trafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to Section 202 of the Controlled Substances Act of 1970.” March 26, 2002 Notification Letter, Attachment at 1; 10 C.F.R. § 710.8(h) (Criterion H). The Notification Letter continued that the behavior is “an illness or mental condition which in the opinion of a psychiatrist causes, or may cause, a significant defect in the judgment or reliability of [the Individual].” March 26, 2002 Notification Letter, Attachment at 1; 10 C.F.R. § 710.8(k) (Criterion K). Further, the Letter states that the Individual “deliberately misrepresented, falsified, or omitted significant information from a Questionnaire for National Security Positions, a personnel qualifications statement, or written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization.” March 26, 2002 Notification Letter, Attachment at 1; 10 C.F.R. § 710.8(f) (Criterion F). Finally, the Notification Letter charges that the Individual “has been, or is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse.” March 26, 2002 Notification Letter, Attachment at 1; 10 C.F.R. § 710.8(j) (Criterion J).

The Individual filed a request for a hearing. This request was forwarded to the Office of Hearings and Appeals, and I was appointed Hearing Officer. A telephone conference and Hearing were subsequently held pursuant to 10 C.F.R. § 710.25(f) and (g). At the Hearing, the DOE Counsel presented three witnesses: the Individual, the DOE Psychiatrist, and a manager with the Individual’s employer. The Individual represented himself and called two witnesses, his immediate supervisor and a DOE employee in whose area the Individual works. As discussed below, the Individual has not convinced me that restoring his security clearance would not endanger the common defense and would be clearly in the national interest.

## *II. STANDARD OF REVIEW*

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render an opinion based on that evidence. See 10 C.F.R. § 710.27(a). The regulations state that the access authorization decision “is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). I have considered the following factors in

rendering this Opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. See 10 C.F.R. §§ 710.7(c), 710.27(a).

### III. CONCLUSIONS OF LAW AND FINDINGS OF FACT

#### Criteria K and H

In the present case, I find that the Individual has not presented sufficient evidence to resolve the security concern raised by his marijuana use under Criteria K or H. In considering whether to recommend restoring the DOE Security Clearance of an individual who has used marijuana, I find that the extent of the individual's marijuana use, the length of time since the individual's last use of marijuana, whether the individual's marijuana use violated a DOE Drug Certification, and how the individual's marijuana use came to the DOE's attention to be particularly significant. *Personnel Security Review* (Case No. VSO-0402), 28 DOE ¶ 82,787 (2001), *aff'd* (OSA April 20, 2001); *Personnel Security Review* (Case No. VSO-0321), 27 DOE ¶ 82,842 (2000), *rev'd*, (OHA 2000), *aff'd*, 28 DOE ¶ 83,007 (OSA 2000). In correlation with the Individual's marijuana use, DOE has asserted under Criterion H that his substance abuse, *i.e.*, marijuana use, is "an illness or mental condition of a nature which, in the opinion of a board-certified psychiatrist, other licensed physician or a licensed clinical psychologist, causes, or may cause, a significant defect in judgment or reliability." March 26, 2002 Notification Letter, Attachment at 1; 10 C.F.R. § 710.8(h). Because he determined that the Individual had used marijuana prior to the interview and while holding an access authorization, the DOE Psychiatrist asserted that the Individual had a significant defect in judgment.

The Individual's actual marijuana use appears to have been brief. He states he "had a couple of hits" at a wedding reception three days before he was interviewed by the DOE Psychiatrist. Tr. at 13. The DOE Psychiatrist testified that the Individual would have had to have smoked an entire marijuana cigarette for a positive urine screen three days after he used the drug. *Id.* at 34. Whether it was one cigarette or a couple of "hits," I believe the Individual drug use to be of a very limited duration, only that one instance. He has attempted to minimize his marijuana use because he recognizes its seriousness and significance. He does appear committed to avoiding future drug use. Further, the marijuana use was of a very short and limited duration. Moreover, his use did not violate

a DOE Drug Certification. However, it has been less than a year since he used the marijuana, and the usage came to DOE's attention with the urine test results, after he had lied about using drugs, rather than through self reporting his usage. Weighing all these factors, I find that the Individual has not mitigated the DOE's security concerns with regard to Criterion K.

With respect to Criterion H, although I believe that the Individual's marijuana use was very limited, I agree with the DOE Psychiatrist that it shows a severe defect in judgment. The Individual was aware that he would be interviewing with the DOE Psychiatrist three days after he used the marijuana, but he used it anyway. The Individual was also aware that drug use was contrary to law and the policy of the DOE when holding an access authorization. I believe that the Individual thought that his drug use was so minimal as to be unimportant to DOE. However, we have previously found that even minimal use of an illegal substance may raise sufficient concerns to justify recommending that an access authorization not be restored. *Personnel Security Review* (Case No. VSO-0448), 28 DOE ¶ 82,816 (August 17, 2001).

When an individual becomes involved with illegal drugs, that individual exhibits an unacceptable and disturbing disregard for laws prohibiting their use. Such disregard for the law raises concerns that the Individual may similarly disregard other laws, including those which protect classified information and special nuclear materials. See *Personnel Security Review* (Case No. VSO-0116), 26 DOE ¶ 82,765 at 85,602 (1997) (citing *Personnel Security Review* (Case No. VSO-0013), 25 DOE ¶ 82,752 at 85,512 (1995)). Further, the use of illegal drugs (and the disregard for law and authority that such use suggests) indicates a serious lapse in judgment and maturity. Involvement with illegal drugs may also render the user susceptible to blackmail or coercion. The concerns raised by an individual's illegal drug use are heightened when the drug use occurs while the Individual maintains a DOE security clearance, since avoiding illegal drug use is a requirement of both the DOE's safety and security regulations. Moreover, in light of the DOE's policies against any involvement with illegal drugs, any illegal drug use by an individual who maintains a DOE access authorization evidences poor judgment. *Personnel Security Review* (Case No. VSO-0289), 27 DOE ¶ 82,823 (1999) (citing *Personnel Security Review* (Case No. VSO-0023), 25 DOE ¶ 82,761 at 85,579 (1995)). I believe DOE properly invoked Criteria H. Moreover, I do not believe the Individual has mitigated the DOE's concern that he has a severe defect in judgment by using marijuana three days prior to his interview with the DOE Psychiatrist.

#### **Criterion F**

Next, the Local Security Office asserted that the Individual "deliberately misrepresented, falsified, or omitted significant information from a Questionnaire for National Security

Positions, a personnel qualifications statement, or written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization.” March 26, 2002 Notification Letter, Attachment at 1; 10 C.F.R. § 710.8(f). The Local Security Office claims that the Individual denied to the DOE Psychiatrist using illegal drugs; however, the urine drug screen administered during his interview with the DOE Psychiatrist was positive. At the Hearing, the Individual admitted that he had used marijuana at a wedding three days prior to his interview. Tr. at 13. He stated that it was such a minimal amount, he had blocked it out. *Id.* at 14. Providing false information is a serious matter. The Individual’s lying about his marijuana use to the DOE Psychiatrist calls into question the Individual’s reliability and trustworthiness. In sum, the Individual has failed to mitigate the security concerns raised by his failure to respond honestly to the question from the DOE Psychiatrist concerning illegal drug usage.

Using illegal drugs and later lying about it raise serious security concerns because they may reflect an inability to safeguard classified information and special nuclear material. False statements made by an individual in the course of an official inquiry regarding a determination of eligibility for DOE access authorization raise serious issues of honesty, reliability, and trustworthiness. The DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. *See e.g., Personnel Security Review* (Case No. VSO-0281), 27 DOE ¶ 82,821 at 85,915 (1999), *aff’d*, 27 DOE ¶ 83,030 (2000) (terminated by OSA, 2000); *Personnel Security Review* (Case No. VSO-0013), 25 DOE ¶ 82,752 at 85,515 (1995), 25 DOE ¶ 82,752 (1995) (affirmed by OSA, 1995).

## Criterion J

The DOE has asserted under Criterion J that the Individual “has been or is a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist as alcohol dependent or as suffering from alcohol abuse.” March 26, 2002 Notification Letter, Attachment at 1; 10 C.F.R. § 710.8(j). The Notification Letter bases its Criterion J derogatory information on both the DOE Psychiatrist’s evaluation and on events in the Individual’s past that he related during the August 28, 2001 PSI. DOE Exhibit 1, Attachment 1 at 1. In his report, the DOE Psychiatrist diagnosed the Individual as suffering from alcohol abuse. DOE Ex. 3 at 8. In making this diagnosis for alcohol abuse, the DOE Psychiatrist relied on *The Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition (DSM-IV)*.<sup>1/</sup> *Id.* at 2.

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<sup>1/</sup> The DSM-IV-TR is a standard reference source, the purpose of which is to provide a guide for diagnosis of psychological conditions for use by clinical practitioners. *DSM-IV-TR* at xxiii.

The DOE Psychiatrist based his diagnosis of the individual on (1) his interview with the Individual, (2) laboratory evaluations conducted immediately following the interview, and (3) psychological testing performed at the interview. DOE Ex. 3. The DOE Psychiatrist states he found that the Individual suffered from alcohol abuse because the Individual met DSM-IV Criteria 1, 2, and 3 for alcohol abuse.<sup>2/</sup> DOE Ex. 3 at 7. There is no information indicating that the Individual has met the first criterion of the DSM-IV-TR for substance abuse. There is no testimony that his work or home life has suffered from his alcohol use. To the contrary, both of the Individual's witnesses stated he was an excellent employee with innovative ideas for fixing problems. They have never seen him inebriated or "hung over" at work. However, he does meet criteria 2 and 3 for substance abuse. He has had three DUIs and the associated legal problems. The Individual submitted evidence from a counselor that indicated a mild problem with drinking and a low probability of dependence on alcohol or drugs. Ind. Exhibit A.

The Individual asserts that he does not have a drinking problem. However, he testified that he has entered a treatment program. At the time of the hearing, he had met with the counselor twice. Tr. at 20. He found it difficult to obtain counseling. *Id.* at 19.<sup>3/</sup> At the Hearing, the DOE Psychiatrist testified that he believes that, although he has entered a treatment program, the Individual still has a lot of denial. *Id.* at 41. The DOE Psychiatrist opined that the Individual needs to be in abstinent for at least a year and in a treatment program such as the one he has entered. *Id.* at 39.

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<sup>2/</sup> The DSM-IV-TR lists four criteria, one or more occurring within a 12-month period, for a diagnoses of substance abuse.

- (1) recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home (e.g., repeated absences or poor work performance related to substance use; substance-related absences, suspensions, or expulsions from school; neglect of children or household)
- (2) recurrent substance use in situations in which it is physically hazardous (e.g., driving an automobile or operating a machine when impaired by substance use.)
- (3) recurrent substance-related legal problems (e.g., arrests for substance-related disorderly conduct)
- (4) continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance (e.g., arguments with spouse about consequences of intoxication, physical fights.

*DSM-IV-TR* at 198.

<sup>3/</sup> The Individual initially attempted to find counseling close to his home. His insurance provider asked him to interview with a counselor close to his work. That counselor suggested he attend counseling closer to his home, since he had family obligations that required his presence. Tr. at 21-22.

Excessive consumption of alcohol, even off the job, raises security concerns because of the possibility that an individual may say or do something under the influence of alcohol that violates security regulations. See *Personnel Security Review* (Case No. VSO-0479), 28 DOE ¶ \_\_\_\_ (May 14, 2002); *Personnel Security Review* (Case No. VSA-0174), 27 DOE ¶ 83,005, *affirmed* (OSA 1998). In this case, the risk is that the individual's excessive use of alcohol might impair his judgment and reliability to the point that he will fail to safeguard classified matter or special nuclear material. It is appropriate for the DOE to question a person's reliability when that person excessively consumes alcohol, operates a motor vehicle while mentally impaired, and gets arrested. See, e.g., *Personnel Security Review* (Case No. VSO-0476), 28 DOE ¶ 82,827 at 85,864 (2001).

In view of the Hearing Testimony and the full record, I conclude that the Individual likely suffers from alcohol abuse. Therefore, I must address whether the Individual is reformed and rehabilitated. There is insufficient testimony as to the evidence to support his claim that he is rehabilitated. He entered a treatment program shortly before the Hearing. Tr. at 20. He has not had a drink in over seven months, but his testimony indicates that such abstinence would not be unusual for him. Tr. at 19. I agree with the DOE Psychiatrist's assessment that the Individual is in treatment because he believes DOE expects it of him, not because he sees that he has a problem with alcohol. The DOE Psychiatrist believes that the treatment program will help him to see that he does have a problem, once treatment begins in earnest. He has not had enough sessions, as of the date of the Hearing, for that to have occurred.

Based on the foregoing, I find that the individual has not mitigated the security concerns raised under Criterion J. The last alcohol-related incident occurred a little more than one year ago. The Individual consumed alcohol seven months prior to the Hearing. Although he has entered a treatment program, his interest in the program stems more from his hope to retain his security clearance than from his realization that he has an alcohol problem. Therefore, I believe that the local security office properly invoked Criterion J and the Individual has not mitigated the security concern raised under this Criterion.

#### IV. CONCLUSION

As explained in this Decision, I find the Individual did not mitigate the DOE's Criterion K concerns regarding his marijuana use, or the concerns regarding Criteria H, J, and L, that he has engaged in unusual conduct and misrepresented, falsified, or omitted significant information from an interview on a matter relevant to a determination regarding eligibility for DOE access authorization. I am therefore unable to find that restoring the Individual's access authorization would not endanger the common defense and security and would be

consistent with the national interest. Accordingly, I find that the Individual's access authorization should not be restored.

Janet R. H. Fishman  
Hearing Officer  
Office of Hearings and Appeals

Date: November 26, 2002



